IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.65 OF 1990

Hastimal Lalwani
since deceased by his heirs & legal representatives
1A) Smt.B.H. Lalwani & ors. .. .. Appellant

V/s.

1. The Municipal Corporation of Gr. Bombay & ors. .. .. Respondents

Mr.S.R. Page for Appellant.

Mr.N.V.Walawalkar with Mrs.Nisha Dabhade for Respondents.

CORAM : SMT.ROSHAN DALVI, JJ.

Dated : 13th April, 2007

ORAL JUDGMENT :

1. In this Appeal the judgment of the City Civil Court, Bombay dated 23rd and 24th October 1989 has been challenged. The judgment passed in Long Cause Suit No.8352 of 1987 in the City Civil Court related to a Notice under Section 351 of the Bombay Municipal Corporation

Act, issued upon the Appellant (original Plaintiff) on 20.8.1987. The Appellant having expired, his heirs have been brought on record. The Appellant (original Plaintiff) challenged the said notice. Due legal process had been followed by the Deputy Municipal Commissioner (DMC for short) and passed the order after hearing the contentions of the Appellant and perusing the documents. The order of the DMC dated 13th July 1988 has also been challenged.

2. The said challenge was moved for the second time, the earlier challenge being in R.A.D.Decl. Suit No.5266 of 1987.

3. It has essentially to be seen in this Appeal as to whether the learned Judge has considered that the notice issued upon the Appellant as the original Plaintiff was rightly issued in respect of an unauthorized and untolerable structure. The learned Judge framed several issues, the two important ones being (i) whether the suit structure

was authorized or tolerable and (ii) whether the notice and the DMC's order were illegal and bad in law.

4. The learned Judge has considered extensive evidence led by the Plaintiff to discharge onus that was on the Plaintiff to prove that the suit structures were authorized and tolerable.

5. The suit structures are in an old building. The suit structures are projecting therefrom. They have no other premises over them. They are seen to be extensions. They are not shown in the original plan. They have not been assessed since prior to the datum line. No taxes are paid in respect of those structures since prior to the datum line.

6. Originally the building underwent repairs by MHADA thrice. The suit structures were not shown in the original plans of the first and second repairs carried out by MHADA.

7. The structures surfaced since 1985. The building was repaired also in 1985. It is from that time that the structures appeared to be in existence. In view of this scenario, the evidence led on behalf of the Plaintiff came to be appreciated by the learned Trial Judge.

8. A reading of the evidence shows that assessment extracts are from 1982. The suit structures are projecting out of the building. The electoral roll of 1956 to 1960, relied upon by the Plaintiff to show that the sweepers resided in the suit structures, did not show the suit rooms. Whereas all the rooms were numbered, the suit rooms were not numbered. The list of tenants prepared at the time of repair of the building made no reference to the suit premises or tenants therein. The building was purchased from the previous owner. In the letter of attornment, the suit rooms were not shown.

9. The suit rooms came to be shown only after repairs of

1985 followed by the complaint of the tenants' Association.

10. The Defendants in the Suit produced the plans of MHADA. The earlier plans of repairs did not show the suit rooms. The suit rooms had no electricity connection. From all this mass of evidence, the learned Judge has correctly concluded that the suit rooms are neither authorized nor tolerable. The onus which was on the Plaintiff (the Appellant herein) was not discharged. The Notice and the DMC's order followed thereupon are, therefore, valid and proper.

11. The judgment suffers from no error or infirmity. The Appeal is dismissed. No order as to costs.

(SMT.ROSHAN DALVI, J.)